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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,241	07/03/2003	Curtis Brian Williamson	5635	4754

7590 11/30/2006

John E. Vick, Jr.
Legal Department, M-495
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/613,241	WILLIAMSON ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed September 15, 2006, has been entered. Claim 1 has been amended as requested. Claims 15-33 are cancelled. Hence, the pending claims are 1-14.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,897,989 issued to Gray as set forth in section 3 of the last Office Action.

Applicant has amended claim 1 to limit "at least some" of the tufts to "consisting essentially of" groups of continuous filament non-textured fibers. Applicant asserts that said amendment distinguishes the present invention from the Gray invention in that Gray employs tufts of a three-ply yarn comprising one textured yarn and two non-textured yarns (Amendment,

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page 4, 4th paragraph). As such, applicant believes Gray cannot properly be considered to contain at least some tufts “consisting essentially of groups of continuous filament non-textured fibers” (Amendment, page 5, 1st paragraph).

Said amendment is insufficient to overcome the standing rejection since the transitional phrase “consisting essentially of” limits the scope of a claim to the specified materials or steps “and those that do not materially affect the basic and novel characteristic(s)” of the claimed invention. *In re Herz*, 190 USPQ 461. For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, “consisting essentially of” will be construed as equivalent to “comprising.” See *PPG Industries v. Guardian Industries*, 48 USPQ2d 1351. If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of “consisting essentially of,” applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant’s invention. *In re De Lajarte*, 143 USPQ 256.

Applicant asserts “the specification clearly identifies one of the basic and novel characteristics of the claimed invention (i.e., providing the specified degree of surface coverage without the use of textured fibers or yarns) (Amendment, page 4, 5th paragraph). In support of this assertion, applicant notes the specification, paragraph [0004]:

[0004] Another potential solution is to utilize so-called “textured” yarns in forming a pile across a fabric. Textured yarns are made using processes such as false twisting and the like so as to impart a textured irregular surface character along the length of the filaments within the yarns. This process of manufacture bulks the filaments along their length. The original uniform character of the filaments within the textured yarns is substituted with an irregular random character in textured yarns. While such textured yarns may provide beneficial surface coverage characteristics, they may pose problems in fabric manufacture while also adding complexity and expense due to the texturizing processes required. In addition, the use of textured yarns may give rise to an enhanced potential for the occurrence of single end defects and non-uniformity in dyeing, which are undesirable.

However, the examiner disagrees that said paragraph “clearly identifies one of the basic and novel characteristics of the claimed invention.” At best, said paragraph notes deficiencies of the use of textured yarns. The specification does not clearly indicate an object of the invention is to provide a pile fabric without the use of textured fibers or yarns. As such, applicant’s argument is found unpersuasive and the above rejection stands.

Applicant also argues that one would not have been motivated to eliminate the textured fiber of Gray since the reference teaches said textured fiber is an essential component of the invention (Amendment, page 5, 2nd paragraph). In response, it is noted that one need not be motivated to eliminate the textured fiber since the present claims do not necessarily exclude said textured fiber. Therefore, the rejection of claims 1-14 over the cited Gray reference stands.

Applicant has also amended the claims to limit the fibers to comprising “a partially oriented thermoplastic polymer.” However, said amendment is also insufficient to overcome the standing rejection. Note the feature of a partially oriented yarn was addressed with respect to claim 13 in the Office Action mailed 08/24/05, page 4, 1st paragraph. Specifically, it was asserted that the polyester yarn exemplified by Gray is known to be a partially oriented yarn. Applicant traverses this argument by asserting that while the starting material of may be partially oriented that the yarn is then drawn to the point of becoming fully oriented in the finished pile fabric (Amendment, page 5, 3rd paragraph). This argument is unpersuasive since applicant has not provided sufficient evidence that a draw ratio of 1.7 would inherently produce a fully oriented yarn. Note US 7,043,804 issued to Goineau et al. which teaches a process for producing a fully oriented polyester yarn from a partially oriented yarn by drawing said partially oriented yarn at a high draw ratio in the range of 1.8-2.3 (abstract). The arguments of counsel cannot take

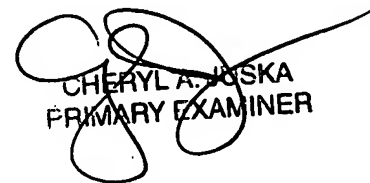
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the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Therefore, applicant's argument is found unpersuasive and the above rejection is maintained.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
November 26, 2006